

<b>JRPP No:</b>	2011NTH015
<b>DA No:</b>	DA2011-38
<b>PROPOSED DEVELOPMENT:</b>	New Police station building, demolition of existing buildings and ancillary works
<b>APPLICANT:</b>	Caldis Cook Group, Level 2, 45 Chippen Street, CHIPPENDALE NSW 2008
<b>REPORT BY:</b>	Murray Amos, Senior Strategic / Development Officer, Moree Plains Shire Council

## **Assessment Report and Recommendation**

### **SUMMARY:**

Development Application No. DA2011-38 for a new Police station building, demolition of existing buildings and ancillary works on Lot 1 DP 631314, 60-64 Frome Street, Moree was lodged with Council on 12<sup>th</sup> April 2011.

The Development Application comprises Crown Development and has a total value of \$15 million.

The proposal has been referred to the JRPP under clause 89 of the EP&A Act 1979.

This application has been assessed in accordance with Section 79(c)(1) of the Environmental Planning & Assessment Act 1979.

### **RECOMMENDATION:**

**1. That the proposed new Police station building, demolition of existing buildings and ancillary works on Lot 1 DP 631314, 60-64 Frome Street, Moree be approved subject to the conditions below:**

**2. Should the JRPP support Council's position to impose Section 94A levies on the proposal that the matter be referred to the Minister for determination in accordance with clause 89A of the Act.**

#### **Demolition Conditions**

- 1 This consent will be void if not physically commenced within five (5) years from the date of approval.**  
Reason: To ensure that the development is commenced within a satisfactory timeframe.
- 2 All waste must be appropriately disposed of to a licensed land-fill with the site being left in a clean state and free of all demolished rubble and waste.**  
Reason: To ensure all construction waste is disposed of at a licensed land fill site and that the site is left free of all demolition waste.

- 3**      **Consent is granted for the demolition of the existing police station and ancillary structures on the property, subject to strict compliance with the following conditions:**
- a)      The developer is to notify adjoining residents 7 working days prior to demolition. Such notification is to be clearly written on A4 size paper giving the date demolition will commence and be placed in the letterbox of every premises (including every residential flat or unit, if any) either side, immediately at the rear of and directly opposite the demolition site.**
  - b)      Written notice is to be given to the Certifying Authority for inspection prior to demolition. Such written notice is to include the date when demolition will commence and details of the name, address, business hours and contact telephone number and licence number of the demolisher. The following building inspections must be undertaken by the Certifying Authority:**
    - i)      A pre commencement inspection when all the site works are installed on the site and prior to demolition commencing.**
    - ii)     A final inspection when the demolition works have been completed.**
  - c)      Prior to demolition, the applicant must erect a sign at the front of the property with the demolisher's name, licence number, contact phone number and site address.**
  - d)      Prior to demolition, the applicant must erect a 2.4m high temporary fence, hoarding between the work site and any public property (footpaths, roads, reserves etc). Access to the site must be restricted to authorised persons only and the site must be secured against unauthorised entry when work is not in progress or the site is otherwise unoccupied.**
  - e)      Demolition is to be carried out in accordance with the relevant provisions of Australian Standard 2601:2001: Demolition of structures.**
  - f)      The hours of demolition work are limited to between 7am and 7pm on weekdays and between 7am and 3pm on Saturdays. No demolition work is to be carried out on Sundays or public holidays.**
  - g)      Hazardous or intractable wastes arising from the demolition process must be removed and disposed of in accordance with the requirements of WorkCover New South Wales and the Office of Environment & Heritage.**
  - h)      Demolition procedures must maximise the reuse and recycling of demolished materials in order to reduce the environmental impacts of waste disposal.**
  - i)      During demolition, public property (footpaths, roads, reserves etc) must be clear at all times and must not be obstructed by any demolished material or vehicles.**
  - j)      All vehicles leaving the site with demolition materials must have their loads covered and vehicles must not track soil and other materials onto public property (footpaths, roads, reserves etc) and the footpaths must be suitably protected against damage when plant and vehicles access the site.**
  - k)      The burning of any demolished material on site is not permitted and offenders will be prosecuted.**

- l) Care must be taken during demolition to ensure that existing services on the site (ie, sewer, electricity, gas, phone) are not damaged. Any damage caused to existing services must be repaired by the relevant authority at the applicant's expense.
- m) Suitable erosion and sediment control measures in accordance with the Soil and Water Management Plan must be erected prior to the commencement of demolition works and must be maintained at all times.
- n) Prior to demolition, a Work Plan must be prepared and submitted to the Certifying Authority in accordance with the relevant provisions of Australian Standard 2601:2001 Demolition of structures by a person with suitable expertise and experience. The Work Plan must identify hazardous materials including surfaces coated with lead paint, method of demolition, the precautions to be employed to minimise any dust nuisance and the disposal methods for hazardous materials.
- o) If the property was built prior to 1987 an asbestos survey prepared by a qualified occupational hygienist is to be undertaken. If asbestos is present then:
  - i) A WorkCover licensed contractor must undertake removal of all asbestos.
  - ii) During the asbestos removal a sign "DANGER ASBESTOS REMOVAL IN PROGRESS" measuring not less than 400 mm x 300 mm is to be erected in a visible position on the site to the satisfaction of Council.
  - iii) Waste disposal receipts must be provided to the Certifying Authority as proof of correct disposal of asbestos laden waste.
  - iv) All removal of asbestos must comply with the requirements of WorkCover and Moree Plains Shire Council.
  - v) An asbestos clearance certificate prepared by a qualified occupation hygienist must be provided at the completion of the demolition works.

**Reason:** To ensure that the demolition complies with all relevant standards and requirements.

- 4** Building work is permitted between the hours of 7am and 7pm Monday to Friday and between 7am and 3pm Saturday. No building work shall take place on Sunday or Public Holidays.

**Reason:** To ensure that the amenity of adjoining land is not adversely affected by the generation of excessive noise levels, etc.

- 5** Before commencement of any work a sign(s) is/are required to be erected in a prominent, visible position:
- (i) stating that "unauthorised entry to the work site is prohibited";
  - (ii) showing the name of the person in charge of the work site (principal contractor) and a telephone number at which that person can be contacted outside working hours; and
  - (iii) the sign(s) must be removed when all building work has been completed.

**Reason:** To ensure the requirements of the Environmental Planning and Assessment Act are satisfied.

- 6 Any damage caused to Council's infrastructure, due to the Demolition works undertaken, shall be restored at the Applicant's expense.  
Reason: To ensure the maintenance of Council's infrastructure.
- 7 All vehicular movements over the footpath for the removal of demolition material from the site, are to be carried out under the supervision of a properly qualified person and necessary precautionary measures taken to ensure the safety of members of the public.  
Reason: To ensure the development is undertaken in a manner which is conducive to maintaining public safety.
- 8 All existing sewer connections are to be capped and sealed prior to the completion of the demolition operation. The sewer is to be excavated at the shaft, capped and adequately sealed at the sewer junction by a licensed plumber/drainier.  
Reason: To ensure minimum public health standards are maintained.
- 9 Arrangements are to be made with a licensed plumber to cap the existing water services.  
Reason: To ensure disused service does not cause a nuisance to adjoining properties.

#### **Conditions for New Works**

- 10 The development being undertaken in accordance with the Environmental Planning and Assessment Act 1979, the Local Government Act 1993, environmental planning instruments, Council's Codes and Policies, appropriate standards, the application made, markings of the identified plans noted (Caldis Cook Group, Project: Moree Police Station, Project No. 09-215), the Statement of Environmental Effects dated March 2011 by Sue Haertsch Planning and specification attached, except as modified by the conditions of this consent.  
Reason: To confirm and clarify the terms of Council's approval.
- 11 The design of the proposed building and all building work must be carried out in strict accordance with the provisions of the Building Code of Australia and any Australian Standards adopted thereunder.  
Reason: To ensure compliance with the provisions of the Building Code of Australia and associated Australian Standards.
- 12 Pursuant to section 94A(1) of the *Environmental Planning and Assessment Act 1979*, and the *Moree Plains Development Contributions Plan 2006*, a levy shall be paid to Council in respect of the development, being 1% of the cost of carrying out the development as determined by the Council in accordance with the Act and Environmental Planning and Assessment Regulation 2000.  
The amount to be paid is to be adjusted at the time of the payment, in accordance with the provisions of the *Moree Plains Development Contributions Plan 2006* and the Regulation.  
Reason: To ensure the provision of Community facilities and services pursuant to section 94A of the *Environmental Planning and Assessment Act, 1979*.
- 13 Before commencement of any work a sign(s) is/are required to be erected in a prominent, visible position:  
(i) stating that "unauthorised entry to the work site is prohibited";

- (ii) showing the name of the person in charge of the work site (principal contractor) and a telephone number at which that person can be contacted outside working hours; and
- (iii) the sign(s) must be removed when all building work has been completed.

**Reason:** To ensure the requirements of the Environmental Planning and Assessment Act are satisfied.

- 14** The whole of the site must be kept in a clean and tidy manner at all times with provision made on site for the containment of all material that could become windborne.

**Reason:** To ensure adequate provision is made for public safety.

- 15** Toilet facilities must be provided at or in the vicinity of the work site prior to commencement of building works.

**Reason:** To ensure the requirements of the Environmental Planning and Assessment Act 1979 are satisfied.

#### **Annual Fire Safety Statement**

- 16** In accordance with clause 175 of Environmental Planning & Assessment Act Regulations 2000, the owner of a building, each year, must cause the Council to be given an annual fire safety statement for the building

An annual fire safety statement for the building;

a) must deal with each essential fire safety measure in the building and

b) must be given within 12 months after the last such statement was given or after the final fire safety certificate was first issued for the building

**Reason:** To ensure compliance with the provisions of the Environmental Planning and Assessment Act and Regulations.

- 17** The floor level of the proposed building shall not be lower than R.L. 209.25 AHD, which is 150mm above the estimated level of the 1% AEP flood in accordance with Council's requirements for commercial development.

**Reason:** To ensure the development satisfies the requirements of Moree Plains Shire Council DCP 2008.

- 18** All vehicular movements to and from the site shall be in a forward direction. Under no circumstances shall vehicles be permitted to reverse on or off a public road. Vehicular access points and the direction of traffic movement within the site shall be clearly indicated by means of suitable signs and pavement markings.

**Reason:** To confirm and clarify Council's approval.

- 19** All loading and unloading of goods is to take place within the site and not from the footpath or roadway for the life of the development.

**Reason:** To ensure that loading and unloading of goods does not interfere with the use of public footpaths or roadways.

- 20** Concreted driveways to the proposed development shall be constructed from Frome Street. The design and construction of the access shall be in

accordance with the following standard requirements with respect to location, size and type of driveway.

- 1) Moree Plains Shire Council – Driveway Specification
- 2) AS 2890.1-2004

Reason: To ensure that safe and adequate access is available to the site.

- 21 A Traffic Control Plan for construction work in the Road Reserve shall be produced and implemented in accordance with RTA standards prior to the commencement of roadwork.

Reason: To minimise risks to public safety.

- 22 The car park area shall be sealed or concreted. The layout and dimensions of the proposed car parking area shall comply with the following:

1. Austroads Guide to Traffic Management – Part 11: Parking. Parking standard requirement with respect to dimension, and classification of parking.
2. Parking requirements in Chapter 3 – Parking from Moree Plains Shire Council DCP 2008
3. AS 2890.1-2004

Reason: To ensure that the car parking area is functional and constructed to a high standard.

- 23 A physical barrier such as concrete kerb, timber logs or landscaping is to be provided along the front of the parking bays.

Reason: To prevent vehicles from protruding onto the footpath or adjoining property or causing damage to fencing.

- 24 The Applicant shall provide street lighting to the proposed carpark in accordance with the Australian Standard 1158 series – Road Lighting.

Reason: To ensure suitable street lighting is provided to the proposed development.

- 25 The applicant must ensure that the peak storm water discharge rate in a 1 in 20 year event from the proposed development will be no greater than was previously produced by the site. Overland flows from the site must not impact upon adjoining or adjacent land or Council's infrastructure. On-site storm water detention shall be utilized for the car park area. Storm water shall be drained via a silt arrester pit to the on-site detention system(s) and all storm water from the site shall be discharged to Council's storm water system or other approved location.

A comprehensive assessment and report certifying that the on-site storm water system complies with this condition must be provided by a suitably qualified engineer prior to construction works commencing.

Stormwater detention areas must be protected by an appropriate section 88B instrument.

Reason: To ensure appropriate storm water disposal from the site.

***Note: The following requirements should be utilised in the above assessment and report:***

***Based on the Rational Method***

***1. Pre-development peak outflows based on 5% 1 hour rainfall storm event (from IFD data) and runoff coefficient (0.35 for residential development in Moree).***

**2. Post-development peak outflows based on 5% 1 hour rainfall storm event (from IFD data) and runoff coefficient at full development (0.6 given % of site developed).**

**3. Time of concentration – 7 minutes.**

**4. Detention basins accessible to the public (e.g carparks, etc) should have a maximum design depth of 150mm.**

**5. Size of outflow pipe designed to not exceed pre-development flow rates at nominal hydraulic head of full detention storage.**

**6. Design should cater safely for the 1% event with freeboard preferably of 300mm to floor levels (150mm minimum).**

**7. Piping to kerb based on 1 or more 100mm outlets**

- 26 All construction and services below the 1% AEP flood level plus 150mm freeboard shall be constructed of flood compatible materials. The applicant must ensure that storage areas located below the 1% AEP flood level can be cleared prior to the onset of a flood event.**

**Reason:** To ensure that the design and management of the premises complies with Council's DCP 2008 in relation to flooding.

- 27 The applicant must ensure that the hydraulic loading of the proposed redevelopment can be adequately serviced by existing infrastructure prior to occupation of the site.**

**Reason:** To provide an adequate water service, suitable to the development.

- 28 Trade Waste Approval is required for the Wash Down Bay, as per Section 68 of the Local Government Act 1993. This approval is required to discharge any Trade Waste into the sewerage system. Discharge of oily waste cannot be connected into Council's sewerage system without appropriate pre treatment mechanisms being in place.**

**Reason:** To protect Council's infrastructure and the environment.

**Note:** Applications Forms can be obtained from Council's Water & Waste Department.

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## **REPORT**

### **BACKGROUND:**

The purpose of this report is to seek a decision from the JRPP on a proposed new Police station building, demolition of existing buildings and ancillary works on Lot 1 DP 631314, 60-64 Frome Street, Moree.

The subject allotment is zoned 3 Business under Moree Plains Local Environmental Plan 1995 (LEP).

A locality plan is attached as **Appendix 'A'**, the site analysis / demolition plan as **Appendix 'B'**, the proposed floor plans as **Appendix 'C'**, elevation plans as **Appendix 'D'**, the Statement of Environmental Effects as **Appendix 'E'**, the Development Application form as

**Appendix 'F'**, Council's draft conditions and applicant response as **Appendix 'G'** and Council's Section 94A Developer Contributions Plan as **Appendix 'H'**.

### **Applicant and Owner**

The applicant is Caldis Cook Group and the owner is the NSW Police Force (NSW Government).

## **PLANNING CONSIDERATIONS**

Consideration has been given to the range of planning matters as prescribed by Section 79(c) of the Environmental Planning and Assessment Act 1979 with those requiring the consideration of the Council reported below.

## **STATE ENVIRONMENTAL PLANNING POLICIES**

### **State Environmental Planning Policy No. 55 – Remediation of Land**

SEPP 55 requires Council to consider whether land is contaminated prior to granting consent to any development. Council must be satisfied that any necessary remediation has occurred before use of the land is permitted.

The site has historically been used for commercial and administrative purposes. Two underground fuel tanks were recently removed from the site and the land rehabilitated.

It is considered that the proposal satisfies the requirements of SEPP 55 and redevelopment of the site is able to proceed.

### **State Environmental Planning Policy (Infrastructure) 2007**

This SEPP aims to facilitate the effective and efficient delivery of infrastructure across the state. Division 14 of the SEPP applies to Public Administration buildings and buildings of the Crown. The SEPP adopts the Standard Instrument definition for public administration buildings:

Public administration building means a building used for offices or for administrative or other like purposes by the Crown, a statutory body, a council or an organisation established for public purposes, and includes a court house or a police station.

Clause 76 of the SEPP permits public infrastructure buildings with consent in zones that are prescribed by clause 74. The No 3 Business zone comprises a comparable zone and the proposed development is therefore permissible with consent under the SEPP.

## **SECTION 94A CONTRIBUTIONS**

Section 94A contributions have been required under the proposed conditions above. This is in accordance with Council's Section 94A Development Contributions Plan.

The applicant has indicated their opposition to Section 94A being imposed on this proposal as it comprises Crown Development. Additionally this matter has been referred for JRPP review under DA10-0128 which proposes demolition works and the construction of temporary buildings, also at the Moree Police Station site.



## LOCAL ENVIRONMENTAL PLAN

### Moree Plains Local Environmental Plan 1995

The proposed site is zoned 3 Business under Moree Plains Local Environmental Plan 1995.

The proposed redevelopment is permissible within the 3 Business zone with Council consent.

#### Zone Objectives – Zone 3 Business

The objectives of the zone are:

- (a) to encourage the development and expansion of business activities which will contribute to economic growth and employment opportunities within the area;  
**The proposal is a redevelopment of the Moree Police Station site and is considered to complement this objective.**
- (b) to facilitate the establishment of retail, commercial and professional services to meet the needs of the community and which are compatible with the surrounding environment;  
**The proposal will provide a suitable police facility for the town of Moree.**
- (c) to maintain and enhance the role of the Moree town centre as the major centre for retail, commercial and professional services for the area and for associated uses;  
**The proposal represents an upgrade to the existing police facility and is considered to comply with this objective.**
- (d) to provide office employment in locations close to other town centre facilities including Government offices and community services;  
**The development site is located close to town centre facilities.**
- (e) to provide low intensity retail, commercial and tourist activities on the fringe of the town centre of Moree which will not prejudice the commercial viability of the core retail localities in the town of Moree;  
**This objective is not relevant to the proposal.**
- (f) to provide neighbourhood business centres meeting the day to day needs of surrounding residential precincts;  
**This objective is not relevant to the proposal.**
- (g) to provide non-commercial development where such development is compatible with the commercial character of the locality;  
**It is considered that the proposed development is compatible with the character of the locality.**
- (h) to provide carparking to meet the needs of commercial areas;  
**The proposal complies with Council's DCP 2008 in relation to car parking requirements.**

- (i) to provide for development that maintains the town character of Moree and Mungindi and is in sympathy with existing development in terms of the following:
- (i) setbacks
  - (ii) building bulk and scale
  - (iii) visual amenity
  - (iv) heritage significance
  - (v) townscape and streetscape character
  - (vi) existing service infrastructure
  - (vii) land capabilities.
- The proposal is sympathetic to existing development and would contribute to the town character of Moree.**

### **Draft Moree Plains Local Environmental Plan 2011**

Council is obligated to consider the proposal in relation to Draft LEP 2011.

Under Draft LEP 2011 the subject site is zoned B3 Commercial Core.

The proposed redevelopment is permissible in the B3 Commercial Core zone with Council consent.

### **Zone Objectives – Zone B3 Commercial Core**

The objectives of the zone are:

- To provide a wide range of retail, business, office, entertainment, community and other suitable land uses that serve the needs of the local and wider community.  
**The proposed redevelopment will provide improvements to an existing police facility.**
- To encourage appropriate employment opportunities in accessible locations.  
**The proposed site is close to Moree's CBD and is readily accessible.**
- To maximise public transport patronage and encourage walking and cycling.  
**The proposed site is in an accessible location.**
- To maintain and enhance the role of the Moree town centre as the major centre for retail, commercial, administrative, service, cultural and professional services for the region.  
**The proposal is considered to enhance the role of Moree town centre as the administrative centre for police within the shire.**
- To encourage core retail uses in the central CBD, and the facilitation of supporting uses as close as practicable to the CBD.  
**The proposed site is suitably located close to the CBD.**

- To provide for non-commercial development in conjunction with commercial and retail development where such development is compatible with the commercial and retail development and the character of the locality.  
**It is considered that the proposal would be compatible with existing development in the area.**
- To recognise and protect the art deco character of the Moree CBD.  
**The proposal is considered to be sympathetic to Moree's Heritage Conservation Area, which is located adjacent.**

In summary, the proposal is consistent with the provisions of Draft Moree Local Environmental Plan 2010.

## **DEVELOPMENT CONTROL PLAN**

### **Moree Plains Shire Council DCP 2008**

#### **Chapter 3 – Parking**

This chapter requires on-site car parking to be provided at a rate of 1 space per 50 square metres of gross leasable floor area. Under the proposal this would equate to a requirement for 32 parking spaces.

The applicant intends to provide a total of 51 parking spaces including 2 bus parks which is in compliance with the DCP.

#### **Chapter 5 – Moree & Environs Flood Plain Development & Management**

The proposed site is located on flood-prone land according to this chapter.

The building floor height is required to be minimum 150mm above the 1% Annual Exceedance Probability event, which is a level of 209.25 AHD. The proposed floor height for the ground floor level is 209.28 AHD which is compliant with the requirements of this chapter.

The proposed basement is below the specified floor height but would be used for car parking and storage purposes only. Storage management requirements are specified in proposed condition number 26 above. In this regard chapter 5 of the DCP provides as follows:

##### ***Construction below 1% AEP Flood Level***

*Construction to be of suitable flood compatible materials...*

##### ***Storage below 1% AEP Flood Level***

*It is necessary to demonstrate that goods and possessions stored at a lower level than 150mm above the 1% AEP flood level can be moved above that level, by the occupant, within the period of time that a flood warning is issued and inundation of the subject land.*

It is considered that the proposal complies with the objectives and stipulations of chapter 5 of the DCP.

#### **Chapter 8 – Heritage Conservation Area Shopfront & Façade Policy**

The proposed site is located adjacent to Moree's Heritage Conservation Area.

The applicant has proposed several design elements to ensure that the development does not impact upon the Heritage Conservation Area. In line with this the proposed building is to be well set back from the public road. The building has been designed to be compatible with adjacent buildings in terms of form, scale and setbacks.

It is considered that the proposal is sympathetic to existing development in the area and complies with the objectives of this chapter.

## DISCUSSION ON SECTION 94A CONTRIBUTIONS

Council's Section 94A Development Contributions Plan was adopted on 5<sup>th</sup> May 2006. The Plan *'applies to applications for development consent and applications for complying development certificates to be made by or under Part 4 of the Environmental Planning and Assessment Act, 1979 (Act) in respect of development on land to which the Plan applies.'*

A key consideration with respect to Section 94A plans, is that, as outlined in Section 94A of the Act:

*(4) A condition imposed under this section is not invalid by reason only that there is no connection between the development the subject of the development consent and the object of expenditure of any money required to be paid by the condition.*

This means that, unlike contributions under Section 94, no nexus needs to be established. Council's Plan further states:

### **1.8 Council may require payment of the levy as a condition of development consent**

*Subject to any direction of the Minister under section 94E of the Act which is in force from time to time, this Plan authorizes the Council to grant consent to development to which this Plan applies subject to a condition requiring the applicant to pay to the Council a levy of 1% of the proposed cost of carrying out the development, provided that the Council does not also impose on the consent a condition pursuant to section 94 of the Act.*

A Ministerial Direction under Section 94E does place some restrictions on contributions. In particular, developments under \$100,000 are exempt, and between \$100,000 and \$200,000 contributions are capped to 0.5%. Above \$200,000, the full rate applies. The proposed development is costed well in excess of \$200,000 and therefore the full 1% rate applies.

The applicant has indicated their opposition to Section 94A being imposed on this proposal as it is Crown Development. The applicant claims that requesting NSW Police to provide a Section 94 contribution is precluded by the EP&A Act and is unenforceable by Council.

The overall framework for exemptions is set out in the Section 94 Practice Notes, 2005 (p36). These state:

*A council may elect to exempt particular types of development or class of development from the payment of development contributions on the basis of strategic planning, economic or social purposes. The Minister for Infrastructure and Planning may also direct that a certain class (or classes) of development be exempted under section 94E (s94E) of the EP&A Act. The types of development which have been granted exemptions by councils in the past include:*

- *low income (affordable) housing*
- *works undertaken for charitable purposes or by a registered charity*
- *places of worship, public hospitals, police stations and fire stations*
- *childcare facilities*
- *libraries*
- *other community or educational facilities.*

*This is not to promote exemption for these types of facilities. Rather, it demonstrates that some councils do exempt certain types of developments where nexus may be difficult to demonstrate or for some other purpose (such as a public good).*

*While it is not possible to foresee every scenario, permitting the possibility of future requests for exemption being decided on their merits is reasonable – subject to some criteria being specified in advance to ensure equity. Council's policy on exemptions must be stated in the development contributions plan and, as far as possible, be specific about the types of facilities to be exempted. Alternatively, a council may state the criteria that will be used to determine an exemption or exclusion.*

*There may also be a case for having a s94A development contributions plan to cover those uses where nexus may be more difficult to establish (refer practice note Principles underlying development contributions).*

As outlined, the issue of exemptions is discretionary, but these must be identified in the relevant Plan. In particular, it should be noted that the Guidelines do not promote exemption for certain types of facilities.

In the present case a Section 94A Plan is being utilised in accordance with the Guidelines. Council's Section 94A Development Contributions Plan addresses exemptions as follows:

#### **1.11 Are there any exemptions from the levy authorised by this Plan?**

*Council may exempt the following kinds of developments from the levy authorised to be imposed under this Plan:*

*-a development by a registered charity, community organisation or service club that will, in the opinion of the Council, provide a material public benefit to the Moree community.*

*For such claims to be considered, any such development will need to include a comprehensive submission arguing the case for an exemption and include details of the mechanism ensuring that such development is, and will remain in the form proposed.*

There is no general merit-based framework within the Plan although a case must be made for any exemption within the listed items. Crown development is not identified as being exempt from Section 94A levies under this Plan. As there are no potential exemptions for Crown development under the Plan Council staff are obligated to apply the levy in accordance with the Plan. Further, Council staff do not consider that there is any legislation which specifically prohibits the use of Section 94A for Crown developments. In particular, no Direction has been issued by the Minister under Section 94E.

This matter has been discussed with the Tamworth branch of the Department of Planning and they have concurred that Section 94A can legally be applied to Crown developments. As a result Council staff remain of the view that Condition number 12 should remain part of the consent.

It is considered that Section 94A levies should apply to the proposal in the absence of specific exemptions for Crown development in Council's Section 94A Contributions Plan. As a result it is considered that Condition number 12 should remain as part of Council's consent.

## **CONCLUSION**

The application has been assessed in accordance with Section 79(c)(1) of the Environmental Planning & Assessment Act 1979. It is considered that the proposal complies with relevant state and local policies and should be approved subject to the conditions proposed above.

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